

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3211 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CENTRAL BANK OF INDIA

Versus

HIMABHAI MANUFACTURING CO LTD

Appearance:

MR RM DESAI for Petitioner
DS AFF.NOT FILED (N) for Respondent No. 1
MR ASHOK L SHAH for Respondent No. 2
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision : 25.8.99

CAV JUDGEMENT

This petition has been filed for quashing the orders dated 31.08.78 of the Assistant Commissioner of Payments in Claim petition no.74 of 1977 with claim and the order dated 18.08.80 passed in Civil Appeal Nos.

184 of 1978 passed by the learned Judge, City Civil Court, Ahmedabad . The respondent no. 1 was declared a sick unit under section 18(1) of the Industries (Development and Regulation) Act, 1951 by a notification dated 9.10.69 and was taken over by the Authorised Controller. The sick unit was nationalised under the provisions of Sick Textiles (Nationalisation) Act, 1974 with effect from 1.4.74. Certain amounts were outstanding against the respondent no.1 in different accounts including interest on 19th December, 1969. The petitioner filed Civil suit no.48 of 1968 in which consent decree for Rs. 42,69,808.69 ps. came to be passed. After payment of certain amounts, the amount of Rs. 22 lakhs remained due. The Authorised Controller and the Government of Gujarat executed a guarantee deed to pay the entire outstanding amounts of the petitioner bank. The petitioner bank claimed an amount of Rs. 52,71,060.71 ps. in claim petition no. 74 of 1977 before Assistant Commissioner of Payments. The Assistant Commissioner of Payments by an order dated 31st August, 1978 awarded the amount of Rs. 9,16,822.28 ps. holding that rest of the amount was not falling in category (1) of part(A) of the second schedule. The petitioner preferred the above appeal which was also dismissed on 18.8.80.

The contention of the learned counsel for the petitioner is that the Authorised Controller as well as the Government of Gujarat have executed guarantee deeds for the entire amount to be paid to the petitioner bank. As such, unless that liability is discharged fully, the petitioner is entitled for the outstanding amount due.

2. This Court in the case of State Bank of India vs. New Manekchowk Spinning and Weaving Mills Company Ltd., and others (Special Civil Application No. 3395 of 1981 decided on today has held that loan means an advance whether of money or in kind on interest made by a money lender and shall include a transaction on a bond bearing interest in respect of post liability when a loan is renewed. It is also held that even liability of a sick textile undertaking prior to 1st April, 1974 shall be the liability of such owner. The authorised controller has undertaken the liability of payment of amount of the Bank-petitioners for the pre-take over period unless that liability is discharged by making payment of loan or in any form with interest the owner/Authorised Controller/NTC, that liability will continue and that liability has to be discharged by them. The owner/Authorised Controller/NTC are also

required to discharge the liability of payment for period post nationalisation period. The liability continued till 1.4.74 when the liability was re-affirmed prior to the appointed day i.e. 1.4.74 and that liability continues till the loan advanced with interest is discharged. It is not necessary that the loan should be actually given in cash. If the liability has been credited, that would amount to a liability of loan and that will be considered as loan under the Act and that liability will continue till it is discharged. As such, the entire amount of the bank falls under category 1(a) part I of second schedule of the Act and for that amount, the petitioner bank is entitled.

3. Accordingly, this petition is allowed and the orders passed by both the authorities below are quashed and set aside. The respondent no.2 is directed to pay the entire amount of the petitioner's claim in each account for which the Authorised Controller and other gave guarantee and assurance for the payment, within three months from the date of the presentation of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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